

To: Transportation Interim Committee  
From: Joe Carroll, Staff Attorney  
Date: May 6, 2022

Re: Authority of MHP and MCS to reach cross-deputization agreements with tribal governments

## **I. Introduction**

The Montana Highway Patrol [MHP] has cross-deputization agreements with the Blackfeet Tribe and with the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The agreement with the Blackfeet tribe allows an MHP officer, under certain circumstances, to be "commissioned as an officer of the Tribe."<sup>1</sup> The agreement with the Fort Peck tribes allows certain MHP officers as well as certain Wolf Point, Poplar, and Roosevelt County officers to be "appointed as commissioned law enforcement officers of the Tribes." The Fort Peck agreement further allows "certain officers of the Tribes [to] be appointed as commissioned law enforcement officers of the Local jurisdictions" party to the agreement. Both agreements cite to 18-11-101 through 18-11-112, MCA as authority for MHP to enter into the agreement.

Title 18, chapter 11 of the Montana Code establishes the ability of the state of Montana and its agencies to enter into cooperative agreements with tribal governments.<sup>2</sup> 18-11-103, MCA provides that:

"public agencies may enter into an agreement with any one or more tribal governments to . . . perform any administrative service, activity, or undertaking that a public agency or a tribal government entering into the contract is authorized by law to perform."<sup>3</sup>

This memo will show that MHP and Motor Carrier Services [MCS] are public agencies. The memo will further show the law enforcement functions MHP and MCS are authorized by law to perform and that can be subject to an agreement under 18-11-103.

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<sup>1</sup> Cooperative Agreement Providing for Commissioning of Montana Highway Patrol Officers for Enforcement of Traffic Laws on the Roads of the Blackfeet Reservation, 2004.

<sup>2</sup> Montana Code Title 18, chapter 11.

<sup>3</sup> 18-11-103(1)(a), MCA.

## **II. MHP and MCS are public agencies**

The definition of "public agency" in that Title 18, chapter 11 includes "any agency or department of the state of Montana."<sup>4</sup> 2-15-102, MCA, which provides definitions for the organization of the executive branch, provides that "agency" includes a "division . . . of the executive branch."<sup>5</sup> Montana Highway Patrol is a division of the Department of Justice.<sup>6</sup> Motor Carrier Services is a division of the Department of Transportation.<sup>7</sup> Those departments are part of the executive branch.<sup>8</sup> Therefore, MHP and MCS are "public agencies" as defined in 18-11-103.

## **III. MHP and MCS are authorized by law to perform law enforcement functions**

MHP is tasked by statute and administrative rule to perform certain law enforcement functions. Administrative rule 23.1.101(2)(g) provides that "Montana Highway Patrol is responsible for enforcing traffic and criminal laws and investigating vehicle crashes on Montana highways." 44-1-1003, MCA, authorizes MHP officers to make arrests:

for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

MHP officers may make arrest for crimes enumerated in 44-1-1001, including deliberate homicide, kidnapping, and possession of dangerous drugs or of drug paraphernalia.<sup>9</sup> MHP officers may also stop trucks containing livestock to ascertain whether the driver is "rightfully in possession of such livestock."<sup>10</sup> Finally, MHP "has the responsibility to enforce the provisions of

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<sup>4</sup> 18-11-102, MCA.

<sup>5</sup> 2-15-102, MCA.

<sup>6</sup> 23.1.101(1)(c)(vii), ARM.

<sup>7</sup> 2-15-2501, MCA.

<sup>8</sup> Title 2, Chapter 15, MCA.

<sup>9</sup> 44-1-1001(2), MCA.

<sup>10</sup> 44-1-1004, MCA.

Title 61, chapters 5 [Driver's Licenses], 8 [Traffic Regulation], and 9 [Vehicle Equipment], as they apply to motor carriers."<sup>11</sup>

MCS peace officers<sup>12</sup> have authority to make arrests for violations of:

- Title 61, chapters 3 [title and registration] and 5 [Driver's Licenses] "if the vehicle involved is subject to 61-10-141"<sup>13</sup> [weight, width, height, length, axle distance requirements];<sup>14</sup>
- Title 61, chapter 10 [Size – Weight – Load];<sup>15</sup>
- Title 61, chapter 4, part 3 [Transportation of Vehicles];<sup>16</sup>
- Certain mobile home laws;<sup>17</sup>
- The gasoline and special fuel tax;<sup>18</sup>
- Certain motor carrier standards;<sup>19</sup> and
- Title 69, chapter 12 [Motor Carriers].<sup>20</sup>

#### **IV. Conclusion**

MHP and MCS have the statutory authority under 18-11-103, MCA to enter into cooperative agreements with tribal governments for the various law enforcement functions that each agency is authorized by law to perform.

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<sup>11</sup> 44-1-1005, MCA.

<sup>12</sup> 18.8.1401, ARM.

<sup>13</sup> 61-12-206(1), MCA

<sup>14</sup> See 61-10-141, MCA; 61-10-101 through 61-10-104, MCA; and 61-10-106 through 61-10-110, MCA.

<sup>15</sup> 61-12-206(2), MCA; Montana Code Title 61, Chapter 10.

<sup>16</sup> 61-12-206 (3), MCA; Montana Code Title 61, Chapter 4, part 3.

<sup>17</sup> 61-12-206(4), MCA; 15-24-201 through 15-24-205, MCA;

<sup>18</sup> 61-12-206(5), MCA; Montana Code Title 15, chapter 70, part 4.

<sup>19</sup> 61-12-206(6), MCA; 61-10-154, MCA.

<sup>20</sup> 61-12-206(7), MCA; Montana Code Title 69, Chapter 12.